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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,977	09/23/2003	Richard Maddocks	06181-915001	8899
26171	7590	06/23/2005	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			CEGIELNIK, URSZULA M	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/667,977	MADDOCKS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Urszula M. Cegielnik	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 29 October 2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-86 is/are pending in the application.  
4a) Of the above claim(s) 25-35 and 52-86 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-6,12-16,22-24,36-38,41 and 46 is/are rejected.  
7)  Claim(s) 7-11,17-21,39,42-45 and 47-51 is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date *4/13/04 and 9/3/04*.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Election/Restrictions***

The applicant's election of Group I without traverse (filed 29 October 2004) is hereby acknowledged. An action on the merits of claims 1-24 and 36-51 follows.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4, 12-15, 23, 36, and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Holtzman.

Holtzman discloses a toy in the shape of an animal having wheels and a wheel axis, and an oscillating back portion having an axis that is perpendicular to the wheel axis (see attached sheet).

Claims 1, 2, 41 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Mullaney et al.

Mullaney et al. discloses a body (12) including a first body portion (12b) and a second body portion (12a); a wheel (ground contacting drive wheel 14) attached to the body of the toy and able to rotate about a wheel axis (the axis of ground contacting

drive wheel 14) to cause the body (12) of the toy to move in a direction perpendicular to the wheel axis (the axis of ground contacting drive wheel 14); an actuation system (40) within the body that causes the first body portion (12b) to rotate relative to the second body portion (12a) about a pivoting axis (31) that is perpendicular to the wheel axis (the axis of the ground contacting drive wheel 14) and the direction of motion of the toy (forward directional motion effected by ground contacting drive wheel 14, for example); a drive wheel region (64); a head region (20) attached to the first body portion (12b), the actuation system (40) animates the head region (20) after causing the first body portion (12b) to rotate relative to the second body portion (12a).

Claims 1, 5, 6, 16, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Takahashi et al.

Takahashi et al. disclose a body (body frame 2); a wheel region (i.e. a gear wheel region as shown in Figure 5); a wheel axis (the axis of gear wheel 62 shown in Figure 5, for example); a back region (tail frame 5); a pivoting member (91); a motor (59) that causes the toy to move in a forward direction and a backward direction (*the right and left foreleg frames 3 are rotated back and forth by movement of crank arms 24,34 which is operably connected to the motor 59, col. 6, lines 36-40*), both directions being perpendicular to the wheel axis (see Figure 6); a crank (bell crank 87) attached to a lower surface (portion below the portion encompassed by reference numeral 92) of the back region (tail frame 5); a crank device (26) attached to the crank (bell crank 87); a coupling device (24) attached to the crank device (26); a wheel device (the wheeled portion proximate reference numeral 15) attached to the coupling device (24) and to the

wheel region (i.e. a gear wheel region as shown in Figure 5); a flexible skin (fluff cover 6) surrounding the body (body frame 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Holtzman in view of Summerville.

Holtzman discloses the claimed invention except for the body being the shape of a cat or dog.

Summerville teaches constructing a body of a toy to be any desired shape such as a dog, cat, or squirrel, etc. (col. 4, lines 65-66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the body as a dog or cat as taught by Summerville, since such a modification would make the toy more appealing to a child.

***Allowable Subject Matter***

Claims 7-11, 17-21, 39, 42-45, and 47-51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 571-272-4420. The examiner can normally be reached on Monday through Friday, from 6:45AM-3:15PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 571-272-4419.

**The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Urszula M. Cegielnik  
Assistant Examiner  
Art Unit 3714



DERRIS H. BANKS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

Best Available Copy

Feb. 23, 1926.

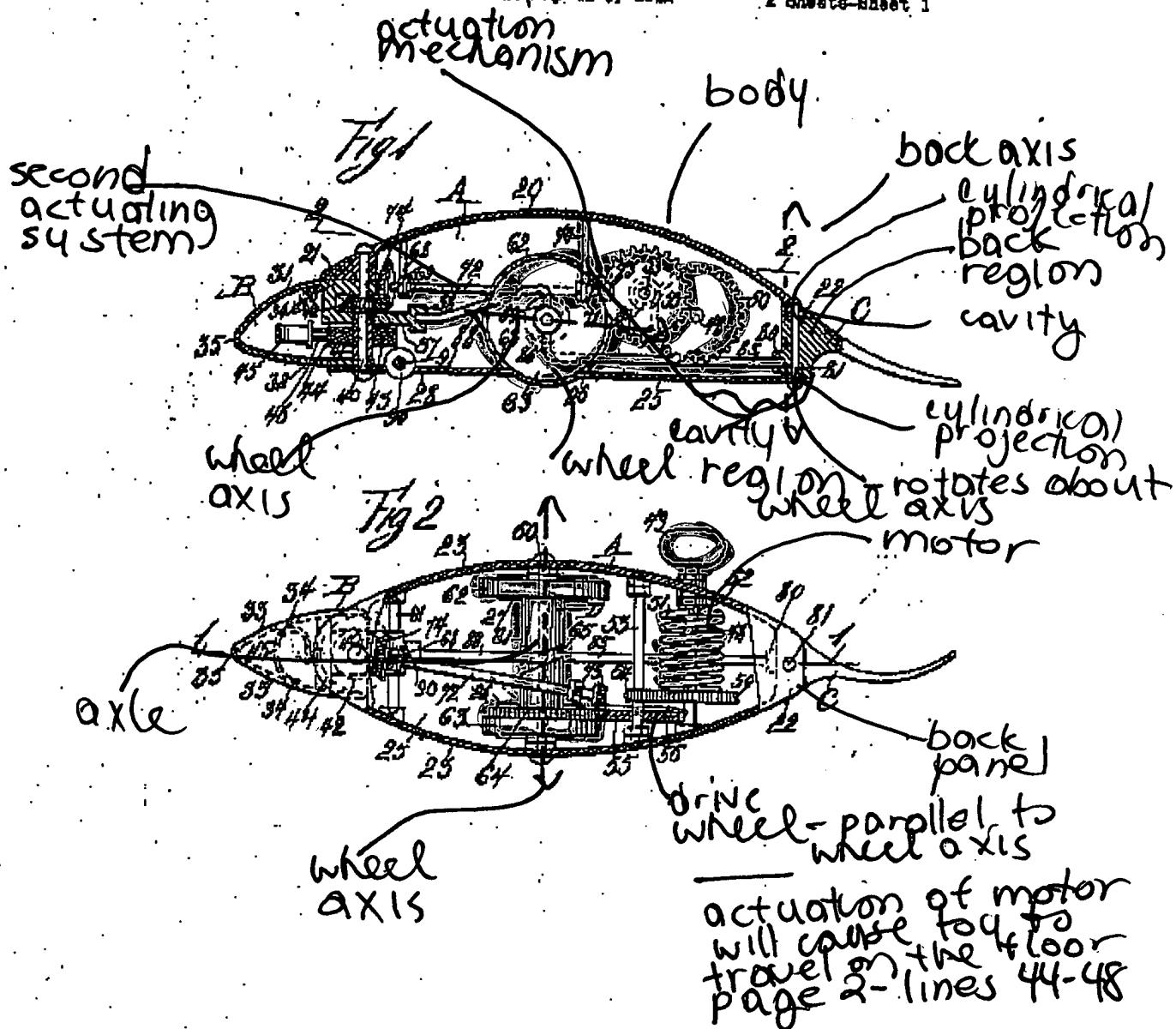
J. HOLTZMAN

1,574,035

TOY

Filed April 3, 1922

2 Sheets-Sheet 1



INVENTOR  
 John Holtzman  
 BY  
 Alexander G. Gammie  
 ATTORNEY

Best Available Copy

Feb. 23, 1926.

J. HOLTZMAN

1,574,035

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Filed April 3, 1922

2 Sheets-Sheet 1

